COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY TO THE CALIFORNIA AIR RESOURCES BOARD ON THE RENEWABLE ELECTRICITY STANDARD PRELIMINARY DRAFT REGULATION

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I.

INTRODUCTION

Southern California Edison Company ("SCE") thanks the California Air Resources Board ("CARB") for giving stakeholders the opportunity to review and comment on the Renewable Electricity Standard Preliminary Draft Regulation ("Draft Regulation") released by CARB on March 11, 2010. SCE appreciates the time and effort from CARB staff in preparing the Draft Regulation and in holding its March 18, 2010 workshop. As discussed further below, SCE supports the equal application of the Renewable Electricity Standard ("RES") to California regulated entities. Any exceptions should be limited and thoroughly considered by CARB before implementation. To achieve its 33% renewables goal, CARB should adopt broad market provisions for eligible renewable resources. While the Draft Regulation's monitoring and review provisions are appropriate, SCE provides some additional clarifying suggestions below.

II.

THE DRAFT REGULATION PROPERLY RECOGNIZES EQUAL RULES AS AN IMPORTANT ELEMENT OF THE RENEWABLE ELECTRICITY STANDARD

SCE is pleased that the Draft Regulation intends to apply the RES equally to all "California electrical corporations, electric service providers, community choice aggregators, electrical cooperatives, and local publicly owned electric utilities."[1] Equal application of the RES to all load-serving entities ("LSEs") gives meaning to Executive Order S-21-09's directive that CARB's regulation "shall regulate all California load serving entities, including investor-owned utilities, publicly-owned utilities, direct access providers, and community choice aggregators."[2] Equal treatment of all LSEs is also necessary to fulfill Assembly Bill ("AB") 32's mandate that CARB design regulations "in a manner that is equitable."[3] Equal treatment also

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[1] *See* RES Preliminary Draft Regulation ("Draft Regulation") at § 97002(a)(12) (defining "regulated party").
[2] Executive Order S-21-09, ¶ 2.
[3] Cal. Health & Safety Code § 38562(b)(1).

ensures that all of California's electricity consumers equally contribute to achievement of the state's renewable energy goals. Because equal treatment is such a critical component of achievement of higher renewable energy goals, exceptions to the RES should be limited and carefully tailored in the manner described below.

A. Newly Formed Entities Should Immediately Comply With the RES

The Draft Regulation creates a partial exemption for regulated parties that provide 200,000 MWh or less of electricity a year to their end-use customers, in order to avoid an undue administrative burden on the smallest regulated parties.[4] If CARB decides to implement such an exemption, it should still require any newly formed regulated party to comply immediately with the RES, as some regulated parties may choose to restructure their operations in order to fall below the threshold. Newly formed regulated parties could also choose to structure themselves so that they fall under the exemption. The higher the threshold, the greater the incentive will be for a regulated party to form or subdivide in order to avoid responsibility for RES compliance. If more and more regulated parties are exempt from the RES, the State will not achieve its RES and AB 32 goals.

To further ensure that exemptions are narrowly tailored and designed to enhance California's ability to reach its goals, the Draft Regulation must include compliance provisions for situations where regulated parties that are typically exempt exceed the minimum threshold in any compliance interval. Any exempt regulated party exceeding the minimum threshold in any compliance interval should be required to retire immediately the appropriate amount of renewable energy credits ("RECs") for the overage.

B. To Maintain Equity, CARB Should Consider Limiting the RES Exceptions for Publicly-Owned Utilities

Under today's Renewables Portfolio Standard, publicly-owned utilities ("POUs") enjoy less rigorous regulations of their renewables portfolios. For example, POUs may meet their self-imposed renewable procurement goals with certain types of generation (such as large

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[4] Proposed Concept Outline for the California Renewable Electricity Standard, October 2009, at 9.

hydropower) that is not California Energy Commission ("CEC")-certified for general RPS compliance purposes. The Draft Regulation would allow POUs who previously claimed these uncertified renewable resources towards RPS program goals to continue to use these resources for the RES.[5] Under the proposed rules, if a POU's Governing Board approves that generation, it could count toward for up to 20 percent of the RES targets. Allowing POUs to include resources in RES compliance that other regulated parties could not utilize would create a two-tiered system that could harm electricity customers.

CARB staff indicated at their March 18, 2010 workshop that they included these types of facilities in the Draft Regulation to avoid placing a penalty on some POUs, as some POUs may have entered into contracts for renewable energy on or after the effective date of the RPS[6] in order to comply "voluntarily" with the RPS. Notably, contracts entered into before January 1, 2003, could not have been for RPS compliance purposes, however, since the RPS did not exist at that time.

Should CARB retain this exception for POUs, CARB should limit it to exempt only regulated parties falling below the minimum 200,000 MWh threshold. Moreover, this exemption should only apply to "RES Qualifying POU Resources"[7] that entered into contracts between the effective date of the RPS (January 1, 2003), and the cut-off date for POU resource eligibility (September 15, 2009). Energy deliveries from resources built and owned by POUs prior to January 1, 2003 should also not be eligible for RES compliance. Otherwise, POUs would have an unfair advantage over investor-owned utilities ("IOUs") in meeting their RES targets.

III.

CARB SHOULD ADOPT BROADER MARKET PROVISIONS FOR ELIGIBLE RENEWABLE RESOURCES

California cannot achieve the highly ambitious goal of a 33% RES without addressing the significant challenges related to creating adequate transmission infrastructure. CARB has

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[5] *See* Draft Regulation at § 97004(c).
[6] SB 1078 (Sher) Chapter 516, Statutes of 2002, established the California RPS, effective on January 1, 2003.
[7] As defined in the Draft Regulation at § 97002(a)(15).

appropriately recognized these barriers, noting that "[a] key prerequisite to reaching a target of 33 percent renewables will be to provide sufficient electric transmission lines to renewable resource zones and system changes to allow integration of large quantities of intermittent wind and solar generation," and that California will need to quickly address transmission and integration issues and permitting difficulties.[8] Similarly, the California Public Utilities Commission ("CPUC") concluded that a 33% renewable energy goal is "highly ambitious, given the magnitude of the infrastructure buildout required."[9] The CPUC also noted that the "magnitude of the infrastructure that California will have to plan, permit, procure, develop, and integrate in the next ten years is immense and unprecedented."[10] This includes approximately $115 billion in new infrastructure investment in an uncertain financial environment and seven major new transmission lines (in addition to the four major new transmission lines needed to reach a 20% renewables goal). Given the transmission constraints currently limiting the interconnection and delivery of renewable resources, CARB should not foreclose any opportunities for renewable procurement. Accordingly, it is appropriate to support the use of unlimited, unbundled RECs from throughout the Western Electricity Coordinating Council ("WECC"). Doing so will significantly expand renewable markets and benefit customers by reducing customer costs through increased competition.

A. The RES Regulation Should Allow Unlimited Access to Unbundled RECs

SCE supports the Draft Regulation's definition of a REC for the tracking, verification, and compliance usage of renewable generation. The Draft Regulation provides two options for the use of RECs within the RES. Option 1 would allow the unlimited use of unbundled and undelivered RECs from eligible renewable energy resources. Option 2 would only allow the use of "tradable" RECs consistent with the approach defined by the CPUC in Decision ("D.") 10-03-

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[8] Scoping Plan at 45; Scoping Plan Appendices, Volume I at C-127-C-128.
[9] CPUC 33% Renewables Portfolio Standard Implementation Analysis Preliminary Results ("CPUC 33% RPS Implementation Analysis") at 1 (June 2009).
[10] *Id.* at 1-4.

021, which would restrict the use of out-of-state RECs for RES compliance.[11] CARB staff is seeking feedback on the impacts the two options would have on investment for in-state renewable resource and transmission development, availability and cost of RECs, and any other information that helps to inform the approach for handling RECs.

For the reasons discussed below, SCE supports the implementation of Option 1. The RES regulation should allow the unlimited use of unbundled RECs from the WECC region in order for California to create an achievable RES. Currently, at least 21 other states allow parties to utilize RECs to demonstrate renewable commitments.[12] Of the WECC states with an RPS, only California and Arizona limit the use of unbundled RECs to demonstrate RPS compliance. Allowing the use of WECC-wide RECs would increase the supply of eligible renewable resources for California's electricity customers. This will encourage the development of the most cost-effective renewable resources throughout the WECC and prevent any one group of suppliers from having excessive market power and control over the price of renewable resources. Out-of-state renewable resources also provide substantial benefits to California customers in terms of shorter development times, reductions in greenhouse gas ("GHG") emissions, and lower prices than in-state resources. Moreover, expanding the market for eligible renewable resources will allow renewable generation to be built in the most optimal locations in terms of access to transmission.

While Option 2 is supported by the CPUC as a way of ensuring that electrons from renewable generators are actually received by California consumers, the physical realities of the electricity system cannot guarantee that any individual electron, whether from a generator in California or from a generator outside of California, will actually reach a consumer in California. Instead, what Option 2 would enshrine would be an elaborate accounting mechanism that would serve as a proxy for determining when electricity might possibly reach California. By restricting

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[11] *See* Southern California Edison Company's (U-338-E) Comments on the Proposed Decision Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standard, filed January 19, 2010, with the California Public Utilities Commission.

[12] Ryan Wiser and Galen Barbose, *Renewables Portfolio Standards in the United States*, Ernest Orlando Lawrence Berkeley National Laboratory, at 25-26 (April 2008).

current procurement options for regulated parties and providing only a limited ability to utilize a constrained TREC market, Option 2 would severely limit regulated parties' flexibility, procurement options, and compliance opportunities, as well as California's ability to assist in the development of the best renewables throughout the West.

a. Restricting Out-of-State Renewable Resources for RES Compliance Will Increase Costs for In-State Renewable Resources

By allowing access to RECs from out-of-state renewable resources under Option 1, CARB will lower compliance costs for California entities and save customers money. By contrast, Option 2 would constrain the volume of renewable resources available outside of California that could satisfy California's RES requirements. Simple economics leads to the conclusion that restricting the availability of out-of-state renewable resources will cause the demand for in-state renewable energy to increase. Assuming a perfectly competitive market, increased demand will result in higher market clearing prices for in-state renewable generation as the demand curve shifts to the right. To meet this increased demand, buyers will then need to pursue additional, less cost-effective renewable resources. Because the market for a scarce resource such as renewable power is not fully competitive, increased demand for in-state renewable generation will simply serve to enhance the bargaining power for renewables developers, allowing them to collect a premium on the sale of their power in the market.

b. Option 2 Will Increase the Costs of Transmission Development and Further Delay Achievement of RES Goals

By restricting the use of bundled and tradable RECs, Option 2 will increase the demand for in-state renewable generation and result in the need for construction of more in-state transmission. The siting and permitting of new transmission is time- and resource-intensive for the developing entities and the regulatory authorities. The increase in transmission lines and additional construction will inevitably result in higher transmission costs and jeopardize the State's long-term ability to achieve its RES goals. Restricting a regulated party's current procurement options will impede the development of new contracts that would support the transmission needed to achieve the State's ambitious renewables goals.

Allowing the unlimited use of bundled and tradable RECs will reduce the costs of transmission development. This conclusion was echoed by a recent study which concluded that allowing widespread trading of RECs within the WECC may substantially reduce the need for new long-distance transmission, which could reduce the costs of meeting aggressive renewable energy targets[13] (such as the RES).

c. CARB Should Create an Accounting Methodology to Capture the GHG Reductions Associated With Out-of-State Investments in Renewable Generation

California is one of the lowest GHG-emitting states on the margin. Under Option 1, it is likely that the out-of-state generation displaced with the purchase of WECC-wide renewable generation would have fewer emissions than the emissions related to the limited out-of-state purchases allowed under Option 2. CARB must establish a robust and transparent accounting methodology for California entities to receive the appropriate credits for emissions reductions associated with its out-of-state investments in renewable development. Thus, when a kWh of out-of-state renewable generation is produced through a California LSE's purchase of a REC under the RES, the GHG not emitted on the margin due to that renewable kWh should be accounted as a reduction in California's total GHG footprint. A California cap-and-trade regime must capture that GHG reduction as an offset to avoid overstating the total emissions reductions necessary to reach the state's GHG goals, especially given the costs and adverse economic impacts on California.[14]

In addition, CARB must consider the impact of increased criteria pollutants in the State under Option 2. Option 2, under the CPUC's definition of a "tradable REC," would permit "dynamic transfers," allowing for the delivery of out-of-state intermittent renewable resources into California. However, additional load-following resources (such as combined-cycle natural

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[13] Andrew Mills, Amol Phadke, and Ryan Wiser, *Exploration of Resource and Transmission Expansion Decisions in the Western Renewable Energy Zone Initiative*, Ernest Orlando Lawrence Berkeley National Laboratory, at 48 (February 2010) (*available at* http://eetd.lbl.gov/EA/EMP).

[14] Local GHG emissions savings may not be realized fully given the backup power needed to integrate intermittent renewable resources, especially when compared to the higher GHG-emitting resources potentially displaced outside of California.

gas plants) would have to be located in-state to integrate this power. The net effect would be increased criteria pollutants in California.

B. Banking and REC Trading Rules Should Provide for the Broadest Possible Market Opportunities

CARB is evaluating the feasibility of inserting additional REC trading rules, and is asking stakeholders for their input. Currently, the Draft Regulation would limit REC trading to regulated parties only. To have the most broad and liquid market possible, REC trading should be open to all entities. A fully competitive market would create downward pressure on pricing which would result in a benefit to customers.

The Draft Regulation would only allow parties to trade a REC for up to three years from its Western Renewable Energy Generation Information System ("WREGIS") creation date or until it is retired in WREGIS. However, in order to capture the full value of a REC, the life of a REC should be unlimited. In order to produce the maximum benefit to customers, parties should be able to hold and trade the REC until the date it is retired. The Draft Regulation allows RECs not used to meet a compliance interval obligation to be banked or traded to other parties. SCE supports the unlimited banking of RECs that parties have not retired in each compliance interval.

IV.

THE DRAFT REGULATION'S MONITORING AND REVIEW PROVISIONS ARE APPROPRIATE

CARB has been directed to work with the CPUC and CEC to minimize duplicative and inconsistent regulatory requirements.[15] SCE appreciates CARB's efforts to implement a properly functioning regulatory system that uses the forms and mechanisms already in place. Accordingly, SCE recommends that the RES and RPS share monitoring, reporting, and verification systems. CARB'S Draft Regulation recognizes the appropriateness of documenting the many issues faced by utilities in achieving increased renewable energy goals. The Draft

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[15] Cal. Health & Safety Code § 38562(f); Executive Order S-21-09, ¶¶ 2-3.

Regulation's provisions for the filing of plans and reports provide the opportunity for regulated parties to detail the many circumstances surrounding the potential impediments to the successful procurement of renewables.

A. CARB Should Consider the Potential of Integration with Broader Renewable Energy Programs When Designing the RES Program

Under the Draft Regulation, California entities may only retire RECs in WREGIS for RES compliance, and may not use them to meet the requirements of any other federal, state, or local program.[16] However, CARB must consider the real potential for federal renewable energy legislation. To avoid unduly burdensome and costly conflicting requirements for LSEs, CARB should provide stakeholders with a plan for integrating the RES program with a federal renewable energy standard.

B. CARB Should Rename the RES Procurement Plan the RES Work Plan

The Draft Regulation creates a requirement that electricity utilities file a "RES Procurement Plan" and provide "project development status reports of any project development activities, including site control, permitting status, financing status, interconnection progress, and transmission access."[17] Currently, utilities are already required to file Long-Term Procurement Plans and RPS Procurement Plans describing their procurement strategies. The RES Procurement Plan content, as outlined in the Draft Regulation, more closely resembles the RPS Compliance reports that utilities file on March 1 and August 1 each year. To avoid confusion with the current reporting requirements, SCE recommends changing the name of the RES Procurement Plan to the RES Work Plan.

C. The Draft Regulation's Enforcement Provisions Are Vague and Create Unmanageable Risks for Regulated Parties

The Draft Regulation provides that violations of the RES are enforceable in accordance with Part 6 of the Health and Safety Code, which codifies the enforcement provisions of AB

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[16] Draft Regulation at § 97004(b).
[17] Draft Regulation at § 97005(b)(2)(B).

32.[18] The AB 32 enforcement provisions refer to several other sections of the Health and Safety Code that create criminal, civil, and administrative penalties for emissions violations, including emissions of air contaminants.[19] These provisions provide a menu of enforcement penalties designed to punish stationary sources for their emissions, and are therefore not readily applicable in the renewables and RECs market framework.

Accordingly, the Draft Regulation is unacceptably vague as to how these penalties would apply to a regulation with renewable procurement targets such as the RES. For example, the Draft Regulation does not explain how CARB plans to apply criminal or civil penalties designed for emissions of air contaminants to a party that did not meet the RES procurement targets in a specific compliance interval. This imprecise and indefinite approach to penalties is unworkable, lacks certainty, and creates unmanageable risks for regulated parties.

CARB staff should introduce specific and clear language in the RES Final Regulation indicating how CARB will apply these enforcement provisions in the RES context. Any such language must also recognize the culpability level of the penalized parties, and address how CARB might assess penalties when dealing with issues beyond the control of the regulated parties.[20] In addition, the Final Regulation should make clear that the assessment of any penalties would remove any deficits that may have accrued for each compliance interval.

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[18] Draft Regulation at § 97008(a).
[19] *See* Health and Safety Code § 38580 et seq., *see also* Health and Safety Code § 42400 et seq.
[20] For example, the Draft Regulation requires an RES Procurement Plan that includes a project development status report of any project development activities, including site control, permitting status, financing status, interconnection progress, and transmission access. Any of these activities may delay compliance with the RES targets due to circumstances beyond a regulated party's control.

V.

CONCLUSION

SCE appreciates the opportunity to comment on the Draft Regulation and to work with CARB on developing an RES Final Regulation that meets the needs of the State and stakeholders.

Respectfully submitted,

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